

REMARKS

Claims 1-3, 6-15, 19-23, 25-31, 33, 69-72, 75, 76, 85 and 86 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,375,683 to Crozet et al., claims 1-3, 6-12, 23-31, 4, 67-72, 74, 77, 84-86 and 88 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent Application Publication No. 2002/0107519 to Dixon et al., and claims 1-3, 6-11, 17-19, 21, 23-30, 32-34 and 63-90 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 7,195,643 to Jackson.

Claim Rejections Based on U.S. Patent No. 6,375,683 to Crozet et al. and U.S. Patent Application Publication No. 2002/0107519 to Dixon et al.

Dependent claims 63-66, 73, 82, 83 and 87 were not rejected by either Crozet or Dixon. The Applicant has taken the following actions with regard to the claim rejections based on Crozet and Dixon.

Independent claim 1 has been amended to include the subject matter recited in dependent claim 66 (i.e., wherein the intervertebral fusion device comprises a fusion “cage”). Since dependent claim 66 was not been rejected by either Crozet or Dixon, incorporation of the subject matter recited in dependent claim 66 into independent claim 1 is submitted to obviate the rejection of independent claim 1 based on Crozet and Dixon. Additionally, dependent claim 66 has been amended to depend from independent claim 2, and dependent claims 63 and 67 have been amended to conform to the antecedent basis established in independent claim 1.

Independent claim 2 has been amended to include the subject matter recited in dependent claim 73 and intervening dependent claim 72 (i.e., wherein the spinal implant comprises “an intervertebral fusion device including a hollow interior with openings extending through said second pair of side surfaces and in communication with said hollow interior”, and “a bone growth promoting material positioned within said hollow interior to facilitate fusion with the adjacent vertebral bodies”). Since dependent claim 73 was not rejected by either Crozet or Dixon, incorporation of the subject matter recited in dependent claim 73 and intervening dependent claim 72 into independent claim 2 is submitted to obviate the rejection of independent claim 2 based on Crozet and Dixon. Additionally, dependent claims 72 and 73 have been

cancelled without prejudice, and dependent claim 74 has been amended to depend from independent claim 2.

Independent claim 25 has been amended to include the subject matter recited in dependent claim 83 (i.e., wherein the intervertebral fusion device comprises a fusion “cage”). Since dependent claim 83 was not been rejected by either Crozet or Dixon, incorporation of the subject matter recited in dependent claim 83 into independent claim 25 is submitted to obviate the rejection of independent claim 25 based on Crozet and Dixon. Additionally, dependent claim 83 has been amended to depend from independent claim 26, and dependent claims 82, 84 and 85 have been amended to conform to the antecedent basis established in independent claim 25.

Independent claim 26 has been amended to include the subject matter recited in dependent claim 87 and intervening dependent claim 86 (i.e., wherein the spinal implant comprises “an intervertebral fusion device including a hollow interior with openings extending through said second pair of side surfaces and in communication with said hollow interior”, and “a bone growth promoting material positioned within said hollow interior to facilitate fusion with the adjacent vertebral bodies”). Since dependent claim 87 was not rejected be either Crozet or Dixon, incorporation of the subject matter recited in dependent claim 87 and intervening dependent claim 86 into independent claim 26 is submitted to obviate the rejection of independent claim 26 based on Crozet and Dixon. Additionally, dependent claims 86 and 87 have been cancelled without prejudice.

The Applicant submits that each of the claim rejections based on the Crozet and Dixon references have been fully addressed by the actions set forth above. Accordingly, the Applicant respectfully requests withdrawal of the rejection of independent claims 1, 2, 25 and 26 and the claims depending therefrom as being anticipated by Crozet and Dixon. The Applicant notes that independent claims 17 and 32, as well as claims 18, 78-81, 89 and 90 depending therefrom, were not rejected based on Crozet and Dixon, but were instead rejected solely as being anticipated by U.S. Patent No. 7,195,643 to Jackson.

Claim Rejections Based on U.S. Patent No. 7,195,643 to Jackson

Submitted herewith is a Declaration of Prior Invention in the United States under 37 C.F.R. §1.131 to remove U.S. Patent No. 7,195,643 to Jackson as prior art. The ‘643 patent has

a purported effective U.S. filing date of August 29, 2003. The Applicant reserves the right to challenge the purported effective U.S. filing date of the '643 patent.

The Declaration is signed and dated by the inventor, and indicates that on a date prior to August 29, 2003, the invention disclosed and claimed in the subject patent application was conceived of by the inventor in the United States, as evidenced in the Invention Disclosure accompanying the Declaration, coupled with due diligence from a date prior to August 29, 2003 up to the filing of the subject patent application (i.e., up to constructive reduction to practice of the invention).

To evidence reasonable diligence, a correspondence dated August 12, 2003 and addressed to the law firm of Woodard, Emhardt, Moriarty, McNett & Henry accompanies the Declaration, wherein instructions were given to prepare a draft patent application based on subject matter set forth in the Invention Disclosure. A draft patent application was prepared and subsequently reviewed/revised by the inventor, followed by filing of the subject patent application with the U.S. Patent and Trademark Office on January 15, 2004. The correspondence dated August 12, 2003 provides evidence that the Invention was complete and ready for patenting on a date prior to August 29, 2003, and that reasonable diligence was apparent from a point just prior to August 29, 2003 (i.e., August 12, 2003) up to constructive reduction to practice of the invention in the United States (i.e., the filing of the subject application).

The Applicant submits that the attached Declaration is effective to remove the '643 patent as prior art to the subject application. Accordingly, the Applicant respectfully requests withdrawal of the claim rejections based on the '643 patent. However, the Applicant reserves the right to refute the claim rejections set forth in the Office Action should the Declaration for any reason be deemed ineffective to remove the '643 patent as prior art.

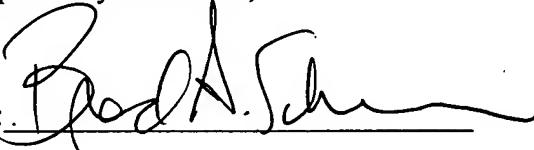
The Applicant has hereby addressed each of the rejections set forth in the Office Action. Accordingly, the Applicant respectfully requests withdrawal of each of the claim rejections and allowance of the subject application.

CONCLUSION

In view of the foregoing amendments and remarks, it is respectfully submitted that the Applicant's application is now in condition for allowance with pending claims 1-34, 63-71, 74-85 and 88-90.

Reconsideration of the subject application is respectfully requested. Timely action towards a Notice of Allowability is hereby solicited. The Examiner is encouraged to contact the undersigned by telephone to resolve any outstanding matters concerning the subject application.

Respectfully submitted,

By: 

Brad A. Schepers
Reg. No. 45,431
Krieg DeVault LLP
One Indiana Square, Suite 2800
Indianapolis, Indiana 46204-2079
(317) 238-6334 (voice)
(317) 238-6371 (facsimile)